

Philip M. Black (SBN 308619)
Matthew Insley-Pruitt (*Pro Hac Vice* application forthcoming)
Justyn Millamena (*Pro Hac Vice* application forthcoming)

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(additional counsel on signature page)*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

NOAH HERMANN, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BRIAN VELUZ-NEPOMUCENO,
PERCIVAL ONG, MIDNIGHT HUB, AND
ROOMS.TV,

Defendants.

No.: 3:24-cv-7704-JD

CLASS ACTION

**PLAINTIFF'S MOTION TO ENLARGE
TIME FOR PLAINTIFF TO SERVE
SUMMONS AND COMPLAINT**

Dept.: Courtroom 11, 19th Floor (San
Francisco)

Judge: Hon. James Donato

1 Pursuant to Civil Local Rule 6-3 and Federal Rules of Civil Procedure 4(m) and 6(b)(1)(A),
2 Plaintiff Noah Hermann moves for an enlargement of time to serve all Defendants. Plaintiff
3 respectfully requests an extension of 60 days beyond the 90-day period set forth in Rule 4(m), until
4 April 4, 2025, to complete service of process. This is the first request for the extension of any
5 deadline in the case.

6 This action commenced with the filing of the Complaint on November 5, 2024. ECF No.
7 1. Plaintiff has diligently undertaken efforts to serve Defendants with process but has encountered
8 obstacles. *See* the accompanying Declaration of Philip M. Black (“Black Decl.”). Specifically,
9 servers have encountered significant obstacles in serving Defendants due to the individual
10 Defendants’ residences being located within gated communities, the fact that some Defendants
11 have moved residences, and the fact that the corporate Defendants were dissolved after receiving a
12 demand letter but prior to the filing of the Complaint. *See id.*; ECF No. 1 ¶ 98. In light of these
13 challenges, Plaintiff is exploring alternative service methods, including service through the
14 Secretary of State and attempts to locate any changed addresses.

15 Pursuant to Fed. R. Civ. P. 4(m), if a defendant is not served within 90 days after the
16 complaint is filed, but “plaintiff shows good cause for the failure, the court must extend the time
17 for service for an appropriate period.” Rule 6(b) permits the Court to enlarge the time for
18 performance of any act required under the Federal Rules for “good cause.” Fed. R. Civ. P. 6(b).
19 Where, as here, the requested extension is made before the time for performance has expired, the
20 Court may act *ex parte*, “with or without motion or notice.” Fed. R. Civ. P. 6(b)(1)(A). Moreover,
21 under Rule 4(m), “[d]istrict courts have broad discretion to extend time for service” *Efaw v.*
22 *Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007). Indeed, “Rule 4(m) . . . requires a district court to
23 grant an extension of time when the plaintiff shows good cause for the delay” and “permits the
24 district court to grant an extension even in the absence of good cause.” *Id.* at 1040 (emphasis in
25 original; citation omitted).

26 Here, good cause exists for the requested extension. The combination of gated
27 communities, recent residency moves, and the recent dissolution of the corporate Defendants
28 constitutes good cause for the delay in effecting service and justify an extension under Rule 4(m).

Moreover, even in the absence of good cause, the Court should exercise its discretion to grant the requested extension for at least three reasons. *See Efaw*, 473 F.3d at 1041 (discussing non-exclusive factors district courts may consider in exercising discretion). First, there has been no delay in Plaintiff's efforts to effect service on Defendants. Second, there would be no prejudice to Defendants if the extension is granted, as this litigation only recently commenced and the unopposed Lead Plaintiff motion pursuant to the PSLRA (ECF Nos. 15 and 16) is still pending. Conversely, there potentially could be prejudice to Plaintiff if the complaint were dismissed due to the time that has elapsed since the filing of the Complaint. See ECF No. 1 ¶¶ 78-82. Third, Plaintiff is working diligently to effect service.

For all the reasons set forth herein, Plaintiff respectfully requests that the Court extend the time to serve Defendants for sixty (60) days, until April 4, 2025.

Dated: February 3, 2025

Respectfully submitted,

WOLF POPPER LLP

By: /s/ Philip M. Black
Philip M. Black

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